

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES

Before the Commissioner

In the matter of notice of intent to make a
determination with respect to the Chiropractor
Provider Class Plan of Blue Cross Blue
Shield of Michigan pursuant to Section
509(2) of 1980 P. A. 350

No. 05-003-BC

Issued and entered
this 3rd day of February 2005
by Linda A. Watters
Commissioner

**ORDER FOR NOTICE OF
INTENT TO REVIEW**

I

BACKGROUND

Section 509(1) of 1980 P. A. 350, as amended (Act), being MCLA 550.1101 et seq.; MSA 24.660 (101) et seq., allows the Commissioner of Financial and Insurance Services (Commissioner) to determine whether the arrangements Blue Cross Blue Shield of Michigan (BCBSM) has established with health care providers have substantially achieved the cost, access and quality of care goals set forth in the Act.

The Commissioner is required to evaluate enough BCBSM provider class plans to account for at least 75% of the corporation's provider payments during a 3-year period. The latest 3 year period began on January 1, 2004 and ends December 31, 2006. The Commissioner intends to review the provider class plan for chiropractors at this time.

Section 509(2) of the Act requires the Commissioner to give written notice to BCBSM, and to each person who has requested a copy of such notice, of her intent to make a determination with respect to the provider class plans filed by BCBSM. Section 509(2) grants the Commissioner six months in which to reach her determinations.

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Section 505(2) of the Act requires the Commissioner to establish and implement procedures whereby any person, including a subscriber, may offer advice and consultation on the development, modification, implementation, or review of provider class plans.

In addition to the requirement to gain input on the review and development of provider class plans, there is need to establish an accurate record of the comments presented to the Commissioner. The record can then serve as part of the basis for the determinations that will be made by the Commissioner with regard to BCBSM's achievement of the goals of Section 504.

II

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the foregoing considerations, it is FOUND and CONCLUDED that:

1. Pursuant to Section 509(2) of the Act, the Commissioner shall give written notice to BCBSM, and to each person who has requested a copy of such notice, that she intends to make a determination with respect to a particular provider class plan. The Commissioner shall have 6 months in which to reach a determination.
2. Pursuant to Section 505(2) of the Act, the Commissioner must establish a procedure to gain input into the review and development of provider class plans prepared by BCBSM. The statute is silent as to the method chosen by the Commissioner to fulfill this responsibility.
3. The procedure established by the Commissioner should facilitate the presentation of information by any person and encourage input.

III

ORDER

Therefore, it is ORDERED that:

1. A determination shall be made with respect to the chiropractor provider class plan. The evaluation period shall include calendar years 2002 and 2003. A determination with respect to the chiropractor provider class plan will be made by August 2, 2005.
2. This order shall serve as notice of intent to make a determination with respect to the above stated provider class plan pursuant to Section 509(2) of the Act.

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3. Questions of interest pertaining to the chiropractor provider class plan are included in Attachment A. Pursuant to Section 505(2), written comments will be accepted with regard to these questions or any other matters concerning the chiropractor provider class plan through April 22, 2005, when mailed, faxed or e-mailed to:

Office of Financial and Insurance Services
Health Plans Division
Attention: Susan M. Scarane
P. O. Box 30220
Lansing, MI 48909
Fax: (517) 241-4168
E-Mail Address: smscara@michigan.gov

The Commissioner retains jurisdiction of the matters contained herein and the authority to enter such further Order or Orders, as she shall deem just, necessary, and appropriate.

Linda A. Watters
Commissioner

**BLUE CROSS BLUE SHIELD OF MICHIGAN
CHIROPRACTOR PROVIDER CLASS PLAN
QUESTIONS OF INTEREST
FEBRUARY 1, 2005**

ACHIEVEMENT OF STATUTORY GOALS

The Office of Financial and Insurance Services needs to answer the questions outlined below to determine whether Blue Cross Blue Shield of Michigan's (BCBSM) provider contracts and reimbursement arrangements for chiropractors have met the access, quality and cost goals specified in Section 504 of the Act.

1. Does BCBSM have participation agreements with an appropriate number of chiropractors throughout Michigan to assure that each subscriber has access to covered services?
2. Has BCBSM established and maintained reasonable standards of health care quality for participating chiropractors?
3. Do the reimbursement arrangements for chiropractors assure that the rate of change in BCBSM payment per member to those providers is not higher than the compound rate of inflation and real economic growth?

The Commissioner needs to consider the overall balance of the goals achieved by BCBSM under the chiropractor provider class plan. Weight is to be given to each of the 3 statutory goals so that one goal is not focused independently of the other statutory goals. Comments on how achievement of these goals can best be measured and evaluated will assist the Commissioner in making a determination.

Please note Section 502(a)(10) of the Act specifies BCBSM's PPO provider contracts and reimbursement arrangements are not subject to the provider class plan review process. Thus, comments focusing only on BCBSM's traditional provider contracts and reimbursement arrangements would be appreciated.

ACHIEVEMENT OF BCBSM'S OBJECTIVES

BCBSM must include objectives in each provider class plan. These are expected achievement levels for the goals of reasonable access, cost and quality of health care services. The Office of Financial and Insurance Services needs to also determine whether BCBSM has achieved the objectives contained in the chiropractor provider class plan and how the objectives relate to the statutory goals. Comments regarding the appropriateness and importance of BCBSM's objectives will assist the Office of Financial and Insurance Services in making these determinations.

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A. ACCESS:

The BCBSM access objectives in the chiropractor provider class plan under review are:

- To ensure adequate availability of high quality medical services, throughout the state, at a reasonable cost to BCBSM subscribers.
- Maintain a reimbursement methodology in accordance with the Physician and Professional Provider Participation Agreement that is based on the lesser of the billed charges or BCBSM's maximum payment schedule.
- BCBSM will review reimbursement levels at least every 12 months.
 - An alternative reimbursement arrangement is available to groups through the Medical Surgical (MS-90) program. The MS-90 program was designed to increase reimbursement levels for purposes of reducing out of pocket payments in regions where participation rates were low.
- Maintain and periodically update the directory of participating physicians and professional providers.
- Maintain and update, as necessary, in the Chiropractor's Manual a "Providers' Bill of Rights" explaining: (1) a provider's right to managerial level conference under P.A. 350; (2) how the managerial-level conference processes works and the timeframes involved under it; (3) when the P.A. 350 process can be invoked; (4) how this process relates to the other processes described in the contract. This communication will emphasize that a managerial level conference is a right guaranteed by law to every provider and that arbitration is an alternative to this right.

BCBSM has set the following initiatives toward achieving its access objective:

- The Physician and Professional Participation Agreement is designed to increase the number of formally participating providers in selected areas and to improve BCBSM relationships with providers.
- Participation for the chiropractor provider class is also allowed on a per case basis for chiropractors not formally participating with BCBSM. Chiropractors who participate on a per case basis will be monitored to ensure that acceptable standards of professional performance which apply to formally participating chiropractors are also met for the per case participants.

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- The Physician and Professional Provider Participation Agreement establishes guidelines that hold BCBSM subscribers harmless from:
 - Balance billing;
 - Liability for non-medically necessary services; and,
 - Financial obligation for covered services provided but not billed to BCBSM within a reasonable period

except under those circumstances outlined in Addendum F of the Physician and Professional Provider Participation Agreement.

- BCBSM strives to reimburse for medically necessary services at a reasonable cost to its members through implementation of the utilization management and quality assessment programs which are described in the Cost and Quality sections of the provider class plan.

What types of information and data should the Office of Financial and Insurance Services examine to determine whether or not BCBSM has met its access objective?

Would meeting BCBSM's access objective be sufficient to assure that cost effective, quality services provided by chiropractor providers are available, throughout the state, to BCBSM subscribers?

B. QUALITY OF CARE:

The BCBSM objectives in the chiropractor provider class plan under review are:

- To ensure the provision of quality care to BCBSM subscribers through the application of participation qualifications and performance standards as a basis for chiropractor participation.
- The Physician and Professional Provider Contract Advisory Committee meets on an ongoing basis, generally at least quarterly, to offer advice and consultation on topics such as: proposed modifications to the contract; administrative issues which may arise under the contract; medical necessity criteria and guidelines; reimbursement issues; experimental or investigational procedures; and physician supervision of services.
- Work with the Physician and Professional Provider Contract Advisory Committee to review and update medical necessity criteria, as necessary.

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- The Chiropractor's Manual will be revised, maintained and updated, as necessary, to explain billing, benefits, provider appeals processes and managed care, BCBSM record keeping requirements and an explanation of the Physician and Professional Provider Participation Agreement and its administration.
- Protocols and procedures relating to BCBSM's Physician Retrospective Profiling Program will be communicated to providers as they become available.

BCBSM has set the following initiatives toward achieving its quality of care objective:

- Blue Cross Blue Shield of Michigan offers all qualified chiropractors the opportunity to participate. In order to participate with BCBSM a chiropractor must be licensed by the State of Michigan Department of Community Health. License status is continually reviewed to ensure that participation requirements are appropriately maintained.
- Formal and per case participation for chiropractors is contingent upon BCBSM's acceptance of qualifications and professional standards. These standards may include, but are not limited to: satisfaction of licensure; absence of inappropriate utilization/medical necessity practices as identified through proven subscriber complaints, medical necessity audits and peer review; and, absence of fraud and illegal activities.
- A departicipation policy has been established that provides for review and recommendation for departicipation by the BCBSM Audits and Investigations Subcommittee (AIS). This policy is further described in Addendum I of the attached Physician and Professional Provider Participation Agreement.
- An appeals process has been established whereby participating chiropractors have the right to appeal policy or non-policy issues made by BCBSM. This process is described in Addendum E of the Physician and Professional Provider Participation Agreement.

BCBSM also has the following objectives for the chiropractor provider class plan:

- To facilitate administration of the Physician and Professional Provider Participation Agreement, BCBSM will continue to discuss issues regarding the Agreement with the Office of Financial and Insurance Services upon request.
- BCBSM will not apply any sanction to subscribers receiving services from departicipated providers unless it is authorized to do so by an amendment to P. A. 350 or other appropriate authority.

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What types of information and data should the Office of Financial and Insurance Services examine to determine whether BCBSM has met its quality of care objective?

Would meeting BCBSM's quality of care objectives be sufficient to assure that chiropractors actually meet and abide by reasonable standards of health care quality? Is it also necessary or desirable to consider:

1. Has BCBSM satisfactorily recognized changes that have taken place in the health care industry?
2. The ability of BCBSM to process claims in a reasonable and timely manner: Has BCBSM satisfactorily provided for a reasonable period for the implementation of policy and claims processing system changes?
3. Has BCBSM responded to the need for prompt, reasonable explanations from BCBSM regarding reimbursement issues, medical necessity determinations, audit determinations, etc.?
4. Has BCBSM established reasonable internal procedures for promptly resolving disputes?

C. COST:

BCBSM's achievement of this statutory goal is determined by the application of the cost goal formula found in Section 504 of the Act.

BCBSM's cost objectives in the chiropractor provider class plan under review are to:

- Strive toward limiting the increase in total chiropractor payments per member to the compound rate of inflation and real economic growth as specified in Public Act 350, giving consideration to Michigan and national health care market conditions.
- Provide equitable reimbursement to chiropractors in return for high quality services, which are medically necessary and delivered to BCBSM subscribers at a reasonable cost.
- Each year retrospective profiles are made available to providers upon request.
- BCBSM makes a good faith effort to enforce the per case participation rule in Section 502(1)(b) of P.A. 350 through its audit activities, its provider inquiry and provider consultant activities, and through responses to all complaints. BCBSM will annually report its efforts to enforce the rule and identify any violations that have occurred.

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BCBSM has set the following initiatives toward achieving its cost objectives:

- To strive toward limiting increases in total chiropractor payments per member while, at the same time, providing equitable reimbursement to chiropractors for medically necessary services described herein.

Blue Cross Blue Shield of Michigan reimburses participating chiropractors for covered services which are deemed medically necessary by BCBSM. Determination of medical necessity is described in Addendum A and in accordance with the Contract Advisory Committee Process found in Addendum D of the Physician and Professional Provider Participation Agreement.

Reimbursement Method

For each covered service performed, BCBSM will pay the lesser of the billed charge or the published maximum screen as set forth in BCBSM's maximum payment schedule. Addendum B of the Physician and Professional Provider Participation Agreement further describes the reimbursement methodology.

Billed Charge

The billed charge refers to the actual charge indicated on the claim form submitted by the provider.

Maximum Payment Schedule

The Maximum Payment Schedule is based on Medicare's resource based relative value scale (RBRVS), a schedule of relative procedure values which reflect the resource cost required to perform each service.

The resource costs of the RBRVS system include provider time, specialty training, malpractice premiums, and practice overhead. Values are assigned to each service in relation to the comparative value of all other services. The overall payment level under the RBRVS system is established through the conversion factor. A BCBSM-specific conversion factor is used to determine payment levels under the RBRVS system.

There is currently one maximum payment schedule. BCBSM will give individual consideration to cases involving complex treatment or unusual clinical circumstances in determining a payment level which exceeds the maximum reimbursement level.

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An alternative reimbursement arrangement is available to groups through the Medical Surgical (MS-90) program. The MS-90 program was designed to increase reimbursement levels for purposes of reducing out of pocket payments in regions where participation rates were low.

- Chiropractors may choose to participate on either a formal or per case basis with BCBSM. Formally participating providers agree to accept BCBSM payment as payment in full for all services provided to BCBSM members. Chiropractors participating on a per case basis must accept BCBSM payment as payment in full “for all cases involving the procedure specified, for the duration of the calendar year”.
- Blue Cross Blue Shield of Michigan strives to ensure that only medically necessary services are delivered to subscribers through the implementation of utilization management programs.
- An appeals process has been established whereby participating chiropractors have the right to appeal policy and non-policy issues made by BCBSM. This process is described in Addendum E of the Physician and Professional Provider Participation Agreement.

The Office of Financial and Insurance Services examines existing cost, utilization and communication patterns, the appropriateness of BCBSM's reimbursement arrangements with providers and the overall impact of access and quality of care concerns on cost goal achievement as part of the review process. Comments on the appropriateness of BCBSM's reimbursement arrangements with chiropractors, focusing on whether or not such reimbursement arrangements assure a rate of change in BCBSM payment per member that is not higher than the compound rate of inflation and real economic growth, would be welcome.